

Retailers' Occupation Tax does not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce. See 86 Ill. Adm. Code 130.340. (This is a GIL).

November 30, 1999

Dear Xxxxx:

This letter is in response to your letter dated July 14, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I have worked for AAA for the last eight years. I purchased a 1999 Pontiac Grand Am from BBB, Illinois for use as a driver for AAA. After agreeing on the price of the new car and trade-in vehicle, I gave the finance director of BBB the RUT-7 Rolling Stock Certification with my ICC Papers and Equipment Lease Agreement from AAA. [FINANCE DIRECTOR] said he would get in trouble with the state and he would not fill out the form. I have spoken with PERSON at your Chicago office and, also, a lawyer at your Springfield office and they both agree the dealer should have filled out the form.

I paid \$1,067.33 on this vehicle in state sales tax which I should not have paid. I spoke with [FINANCE DIRECTOR] a couple of days after the sale and he said if he got some written confirmation from you the Department of Revenue he would go to his boss to refund the money.

I am sending a copy of my Equipment Lease papers and Vehicle Identification Card with this letter.

[FINANCE DIRECTOR] asked me if the state needs to send some kind of form for me to get my state sales tax refunded back to me.

The rolling stock exemption is described in the enclosed copy of 86 Ill. Adm. Code 130.340. The exemption is available to interstate carriers for hire for use as rolling stock moving in interstate commerce. Not all items of tangible personal property used on an interstate carrier for hire qualify for the rolling stock exemption. To qualify, the property must be physically incorporated into the vehicle that is an interstate carrier for hire or the property must remain in the qualifying vehicle long enough

to be considered a component part. Retailers' Occupation Tax does not apply to sales of tangible personal property to lessors under leases of one year or longer executed or in effect at the time of purchase with interstate carriers for hire for use as rolling stock moving in interstate commerce. A lessor will not incur Use Tax on the purchase of the vehicle that is leased to the interstate carrier for hire for use as rolling stock moving in interstate commerce under a lease term of one year or longer. See 35 ILCS 105/3-55(b) and 120/2-5(12).

If a lessor leases a vehicle to an interstate carrier for hire under a lease term of less than one year, the rolling stock exemption is also available because the tax does not apply to sales to lessors of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce. See 35 ILCS 105/3-55(c) and 120/2-5(13). In any case, to qualify for the exemption, interstate carriers must also be able to show, from their books and records, that they engage in interstate shipping for hire on a "regular and frequent" basis. Recent legislation has clarified this requirement so that effective August 14, 1999 qualified vehicles must carry persons or property for hire in interstate commerce on 15 or more occasions within a 12-month period.

If the purchaser is a lessor, the purchaser must give the seller of the property a certification to that effect. Please note the giving of such certification does not guarantee that the transaction is nontaxable because the Department is authorized to go behind it and disregard it by examining the purchaser's records or activities. See 86 Ill. Adm. Code 130.340(e). In the information you have presented we do not see evidence that the vehicle you have purchased will be used as rolling stock moving in interstate commerce. Regarding the lessee's Illinois Commerce Commission number, such a number by itself is not evidence that the vehicle would be used as rolling stock moving in interstate commerce. If all deliveries of items were made to points in Illinois and originated from points in Illinois and the items' shipments do not originate or terminate outside Illinois, the interstate commerce requirement would not be satisfied.

We understand you want your retailer to file a claim for credit in conjunction with him returning the sales tax to you. Under Illinois law, only persons who have actually paid taxes to the Department can file claims for credit or refund, which in this case would be your dealer.

We are enclosing a copy of 86 Ill. Adm. Code 130.1501 concerning Claims for Credit. Claims for credit and refunds are available when a person shows that he paid tax to the Department as a result of a mistake of fact or law. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a refund. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. Claims for credit shall state the requirements that are contained in subpart (b) of the regulation. A retailer can file a claim for credit after the purchaser provides documentation that paying tax on the transaction was a mistake of law or fact.

Please note that the Department has no authority to compel the seller to file a claim for credit. Whether or not a seller refunds to a customer the taxes paid and files a claim for credit with the Department is a private matter between the retailer and purchaser.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.